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Legal Liability of Notaries for False Statements in Deeds of Power of Attorney to Grant Mortgage Rights: A Socio-Legal Perspective

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Abstract: This article analyzes the notary's responsibility and the legal consequences for the parties when false information is provided regarding a collateral object that has already been encumbered with a prior mortgage. The issue arises from a statement in a notarial deed declaring that the vessel used as collateral is not pledged to any other party, whereas in fact it has already been pledged to another creditor. This situation creates a legal problem in the form of double collateral, which may harm third parties and lead to legal uncertainty. The research method used is normative juridical, relying on relevant primary and secondary legal materials. The study also refers to statutory regulations concerning the notarial profession, security rights, and relevant empirical facts. The results show that a notarial deed retains its evidentiary strength as an authentic deed in a formal sense; however, materially it may be annulled if it is proven to contain a defect of will in the form of false statements. The notary's responsibility is, in principle, limited to the formal aspects of drafting the deed based on the parties' statements. Nevertheless, the notary is still required to act carefully, thoroughly, and prudently in carrying out their duties. A notary may be held liable administratively, civilly, or even criminally if proven negligent or aware of such false information. The legal consequence of double collateral is the emergence of legal uncertainty and potential losses for parties acting in good faith, where the creditor who first obtains the security right holds a preferred position. Therefore, both the parties and the notary must exercise due diligence in ensuring the accuracy of data and the legal status of the collateral object to guarantee legal certainty, fairness, and optimal legal protection for all concerned parties.

Keyword: Misrepresentation; Notary Public Liability; Ship Mortgage.

INTRODUCTION

A notary is a public official authorized by the state to draw up authentic deeds and exercise other authorities as stipulated under the Law on Notarial Office (UUJN). Pursuant to Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on the Office of Notary, an authentic deed made by a notary possesses perfect evidentiary force and serves as an essential instrument for ensuring legal certainty and legal protection for parties engaging in legal transactions (A. Pratama, 2021). In carrying out their duties, notaries act as neutral and independent public officials who formalize the intentions of the parties into authentic deeds in accordance with applicable laws and regulations.

As public officials, notaries are required to perform their profession based on the principles of integrity, professionalism, and prudence. The responsibilities of notaries are not limited to administrative matters but also encompass moral and legal accountability in the exercise of their office. Therefore, every deed prepared by a notary must be drafted carefully and based on information provided by the parties to ensure legal certainty and prevent future disputes (Almuntas et al., 2023; W. A. S. Prastica, 2020).

In contemporary notarial practice, authentic deeds continue to play a fundamental role in ensuring legal certainty; however, they may also be misused to formalize defective legal transactions when the information submitted by the parties is inaccurate or intentionally concealed, thereby increasing the risk of legal disputes and reducing public trust in authentic legal instruments (Mulyadi et al., 2022). The problem becomes more significant in secured financing transactions because the existence of *double collateral*, in which the same asset is pledged simultaneously to multiple creditors without adequate disclosure, creates overlapping security rights, increases credit risk, and undermines the principles of transparency and legal certainty that are essential to commercial transactions (Prasetyo & Wibowo, 2023).

Recent studies have emphasized that the shipping and maritime finance sector is particularly vulnerable to such legal issues due to the high economic value of vessels and the complexity of ship mortgage registration systems, while the *United Nations Conference on Trade and Development (UNCTAD)* reported that approximately 80% of global merchandise trade by volume is transported by sea, highlighting the strategic importance of legal certainty in vessel financing (UNCTAD, 2023; Sari et al., 2024). Consequently, strengthening the legal responsibility of notaries and improving the verification of information prior to the execution of authentic deeds are essential measures to prevent the misuse of ship mortgages, protect good-faith creditors, and reinforce legal certainty in maritime financing transactions (Hutagalung et al., 2024).

The issue of double collateral in ship mortgages has unique characteristics compared with security rights over land. The ship mortgage registration system has not fully provided an accessible mechanism for third parties to ascertain the encumbrance status of a vessel. Consequently, this situation creates opportunities for bad-faith parties to pledge the same vessel to multiple creditors. As a result, the legal disputes arising from such transactions may not only involve civil liability but may also extend to criminal liability when false statements are incorporated into a notarial deed (Indarko et al., 2026; Rahman, 2018).

Within the context of notarial law, the liability of a notary is fundamentally based on the doctrine of formal truth (*formele waarheid*). This doctrine places the notary in a position where responsibility is limited to the formal truth of the information and documents submitted by the parties, without imposing an obligation to verify their material truth (A. Pratama, 2021). However, developments in legal practice indicate that this doctrine often conflicts with the principle of prudence, which requires notaries to act carefully, diligently, and professionally in carrying out their duties (B. Pratama et al., 2022). The imbalance between these two principles raises significant legal questions regarding the extent of notarial liability when a deed subsequently proves to contain false information.

The legal certainty of collateral ownership constitutes a fundamental principle in secured financing because the use of assets that have already been pledged to another creditor creates substantial legal risks, increases the likelihood of contractual disputes, and undermines creditor protection within commercial transactions (Nguyen et al., 2022). The significance of this issue has become more apparent as the global maritime industry accounts for approximately 80% of international trade by volume, making ships highly valuable financial assets that are frequently utilized as collateral for obtaining business financing, thereby requiring transparent registration and accurate disclosure of encumbrance status (UNCTAD, 2023; Cullinane et al., 2023).

In the present case, PT MPM, through its Director RRT, initially pledged two vessels to PT IBP Tbk in 2020 and subsequently entered into financing arrangements with PT SJE in 2023–2024 by executing several notarial deeds stating that the same vessels had not been encumbered to any other party, thereby raising significant legal concerns regarding the validity of contractual representations, the principle of *good faith*, and the protection of creditors against multiple collateralization (Sari & Prasetyo, 2024). Accordingly, this case demonstrates the urgent need to strengthen legal compliance, due diligence procedures, and verification mechanisms in maritime financing transactions to ensure legal certainty, prevent overlapping security interests, and uphold the integrity of commercial agreements within the Indonesian shipping sector (Hidayat et al., 2023).

In reality, however, the vessels had already been pledged to PT IBP Tbk, and the ownership documents remained under the possession of the first creditor. This fact demonstrates that false information had been incorporated into the notarial deeds, thereby creating a double collateral arrangement over the same object. Such circumstances give rise to legal issues concerning the validity of deeds containing false statements, the extent of notarial liability in the preparation of such deeds, and the legal consequences arising for the interested parties.

Previous studies concerning notarial liability for false statements in authentic deeds have predominantly focused on the criminal liability of notaries in general contexts and have not specifically addressed the issue of double collateral in a Power of Attorney to Grant a Ship Mortgage. Moreover, prior research has not provided a clear limitation regarding the relationship between the doctrine of formal truth and the application of the principle of prudence in the preparation of deeds relating to ship mortgages (Khodijah Damayanti, 2024; A. S. W. Prastica, 2018).

Accordingly, the novelty of this research lies in its analysis of the validity of a Power of Attorney to Grant a Mortgage containing false statements, the scope of notarial liability based on the doctrines of formal truth and prudence, and the legal consequences arising from the existence of double collateral over vessels. This study is expected to contribute theoretically to the development of notarial law and provide practical guidance for notaries in carrying out their professional duties.

Based on the foregoing, this study aims to: (1) analyze the validity of a Power of Attorney to Grant a Mortgage that contains false information; (2) examine the liability of a notary concerning the inclusion of false statements in such deeds; and (3) identify the legal consequences arising for the parties due to the existence of double collateral over vessel objects.

METHOD

This study employs a normative juridical research method, which specifically examines legal norms and systematically analyzes written legal materials. Legal research conducted through the examination of library materials or secondary data is commonly referred to as normative legal research or doctrinal legal research. The type of data used in this study is secondary data, namely data obtained through library research. Secondary data consist of primary legal materials, secondary legal materials, and tertiary legal materials.

Primary legal materials are legal sources that possess binding authority. The primary legal materials used in this study include:

1. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Office of Notary;
2. The Notary Code of Ethics;
3. The Indonesian Civil Code (*Burgerlijk Wetboek*);
4. The Indonesian Commercial Code;
5. The Indonesian Criminal Code;

6. The Indonesian Code of Civil Procedure;
7. Law Number 17 of 2008 concerning Shipping; and
8. Minister of Transportation Regulation Number 39 of 2017 concerning Ship Registration and Nationality.

Secondary legal materials are materials closely related to primary legal materials and assist in analyzing and understanding the primary legal materials. The secondary legal materials used in this research include:

1. Books and legal literature; and
2. Legal journals relevant to the subject matter of the research.

The data were analyzed using a qualitative method, which seeks to explore the meaning underlying the reality, actions, or data obtained, while examining the research object as an integrated whole. In this study, the provisions stipulated in the legislation are examined in greater depth, particularly those concerning the Law on the Office of Notary. Furthermore, all data collected by the author were systematically processed and qualitatively analyzed in order to produce a descriptive-analytical study concerning the liability of notaries for false statements contained in a Power of Attorney to Grant a Mortgage, as examined in Decision Number 1159/PDT/2023/PT DKI and Interlocutory Decision Number 67/Pid.B/2026/PN Sby

RESULT AND DISCUSSION

Chronology of the Financing and Initial Security Arrangement

In 2020, RRT, acting as the Director of PT MPM, submitted a financing application to PT IBP Tbk, which was subsequently formalized through Financing Lease Agreement No. 003/PSP/VIII/20 dated 27 August 2020. The financing had a total value of IDR 17,599,121,809 and was granted for a period of nine years. To secure the financing facility, two vessels, namely the tugboat *BMP 888* and the barge *Bunga Pertiwi 2776*, were designated as collateral. RRT subsequently delivered the ownership documents of the vessels, represented by Grosse Deed No. 6392 and Grosse Deed No. 8749, to PT IBP as part of the security arrangement. These circumstances establish that, prior to the subsequent transaction with DS, the two vessels had already been committed as security for PT MPM's financing obligations to PT IBP.

The pre-existing security arrangement is significant because it determines the legal status of the vessels when they were subsequently offered to another party. The delivery of the ownership documents to PT IBP demonstrates that the vessels were not legally or factually free from a prior security arrangement at the time of the later transaction. The existence of the earlier financing relationship also establishes that RRT, as the representative of PT MPM, had knowledge of the vessels' prior use as collateral. Accordingly, any subsequent representation that the vessels were unencumbered required careful verification before being incorporated into another legal instrument. The chronology therefore indicates that the subsequent transaction involving DS occurred against a background in which the collateral status of the vessels had already been established.

Subsequent Financing Arrangement and Transfer of Funds

In 2023, RRT met DS, the President Director of PT SJE, and represented that he required IDR 4,000,000,000 to finance operational activities and repairs involving the vessel identified in Vessel Transfer Grosse Deed No. 6392 dated 17 June 2021 and the tugboat *BMP 888*. RRT further represented that the funds would be reimbursed after the repair work had been completed and the vessel had resumed operations. In addition, RRT proposed a profit-sharing arrangement under which DS would receive 50% of the operational profits generated from the barge and tugboat activities. These representations formed the basis of DS's decision to provide financial support to PT MPM and the related entities involved in the proposed vessel operations. The transaction therefore created a subsequent financial

relationship in which DS relied on RRT's representations concerning the vessels and the expected security of the transaction.

Beginning on 25 October 2023, DS transferred funds gradually through the bank accounts of PT SJE maintained at Bank BNI and Bank Mandiri. The total amount transferred was IDR 4,000,000,000, which was intended to support the repair and operational requirements of the barge and tugboat. The funds were transferred to the accounts of PT USA at Bank BNI, PT DOK KDP at Bank Mandiri, and PT MPM at Bank Central Asia. The transfer records demonstrate that DS had performed the financial obligation underlying the subsequent contractual arrangement before the relevant notarial deeds were executed. Consequently, the subsequent execution of the notarial deeds cannot be viewed independently from the prior transfer of funds and the representations made by RRT to DS.

Execution of the Notarial Deeds

On 31 January 2024, the parties appeared before Notary RSM, S.H., M.Kn., in Surabaya, where three relevant deeds were read and executed. The first was Operational Cooperation Agreement Deed No. 55, Article 3 paragraph (2) of which provided that RRT, on behalf of PT MPM, would provide a vessel owned by PT MPM as collateral for the cooperation agreement. The second was Acknowledgment of Debt Deed No. 54, which recorded an amount of IDR 4,000,000,000 as having been received in full by the relevant party before execution of the deed. The third was Power of Attorney to Establish a Mortgage Deed No. 56, which contained a declaration that the vessel was solely owned by PT MPM and had not been pledged to any other person or party. The three instruments consequently established a formal documentary framework for the cooperation, acknowledgment of debt, and intended creation of security over the vessel.

The content of Power of Attorney to Establish a Mortgage Deed No. 56 is particularly material to the legal issue examined in this case. The deed recorded RRT's declaration that the vessel was free from any prior pledge, seizure, dispute, or authorization granted to another party. However, the case chronology establishes that the vessels had previously been used as collateral in the financing arrangement between PT MPM and PT IBP. The discrepancy between the declaration contained in the deed and the earlier security arrangement constitutes the central factual conflict underlying the alleged misrepresentation. Accordingly, the legal significance of the deed depends not only on its formal status as a notarial instrument but also on the relationship between the statements recorded in it and the objectively established status of the collateral.

Failure to Deliver the Original Vessel Ownership Document

Following the reading of the three deeds, RRT did not deliver the original Grosse Deed of Vessel Transfer No. 6392 relating to the tugboat *BMP 888* to DS. RRT explained that he had forgotten to bring the original document and subsequently promised that the document would be delivered to the office of Notary RSM, S.H., M.Kn. at a later date. DS relied on this assurance and proceeded to sign Operational Cooperation Agreement Deed No. 55, Acknowledgment of Debt Deed No. 54, and Power of Attorney to Establish a Mortgage Deed No. 56. This sequence demonstrates that DS entered into the contractual and notarial arrangements without obtaining immediate physical possession of the original ownership document. The absence of the original document subsequently became relevant to the effectiveness of the intended security arrangement and to DS's ability to verify the legal status of the vessel.

The failure to deliver the original document also creates a factual distinction between the representation concerning the availability of collateral and the actual circumstances surrounding the collateral documentation. The document was not merely unavailable temporarily from DS's perspective, but was subsequently established to have been connected

to an earlier financing relationship. The existence of the prior arrangement therefore undermines the reliability of the representation that the vessel was free from another security interest. From the perspective of legal certainty, the failure to verify the original document before relying on the representation increased the risk that DS would obtain an incomplete or ineffective security position. The circumstances demonstrate the importance of documentary verification in transactions involving high-value movable assets and competing creditor interests.

Prior Encumbrance and the Emergence of Double Collateral

The subsequent evidence indicates that the representations made before the notary concerning the absence of prior security interests were inconsistent with the earlier financing arrangement. The tugboat *BMP 888* and the barge *Bunga Pertiwi 2776* had previously been submitted as collateral to PT IBP, as evidenced by Grosse Deed No. 6392 and Grosse Deed No. 8749. The original ownership documents relating to PT MPM were also stated to have been delivered to and remained in the possession and custody of BNI. This circumstance was further supported by the Statement Letter issued by PT IBP dated 17 January 2025. The evidence consequently indicates that the collateral status of the vessels predated the execution of Power of Attorney to Establish a Mortgage Deed No. 56.

The discrepancy between the earlier security arrangement and the later declaration creates the factual basis for identifying a potential double-collateral situation. From the perspective of the subsequent creditor, DS relied on a notarial instrument containing a declaration that the vessel was not subject to another security interest. From the perspective of the prior creditor, however, the vessel had already been incorporated into an existing financing and security relationship. The coexistence of these two positions generates uncertainty regarding the enforceability and priority of the subsequent security interest. Therefore, the dispute is not limited to the truthfulness of an individual statement but extends to the broader issue of creditor protection, priority of security rights, and legal certainty in vessel financing transactions.

Position of the Notary and the Parties in the Disputed Transaction

The factual circumstances indicate that RRT was the party who directly made the declaration concerning the legal status of the vessel before the notary. As the representative of PT MPM, RRT was responsible for providing the information and representations that formed the factual basis for the preparation of the relevant deeds. The notary recorded these statements in the authentic instrument within the framework of the notarial function. Nevertheless, the existence of a false statement raises a separate question concerning the extent to which the notary should have verified the substantive accuracy of information supplied by the appearing party. The distinction between the responsibility of the declarant and the professional duties of the notary is therefore central to assessing potential legal liability.

The case also demonstrates the different legal positions of the parties affected by the disputed transaction. PT IBP occupied the position of the prior financing creditor whose security arrangement predated the transaction with DS. DS, by contrast, occupied the position of a subsequent party that transferred funds and relied on the representations and notarial documentation in seeking security for its financial exposure. RRT and PT MPM were positioned as the parties responsible for the representations and contractual commitments underlying the subsequent transaction. The notary occupied a distinct professional position because the notary's role concerned the formalization and authentication of the legal statements presented by the parties. These differentiated positions are essential for determining the allocation of responsibility and the legal consequences arising from the disputed declaration.

Table 1. Synthesis of the Case Position and Principal Legal Findings

No.	Case Element	Established Facts	Legal Significance	Implicated Party
1	Initial financing	PT MPM obtained financing of IDR 17,599,121,809 from PT IBP in 2020	Established a prior financing relationship	RRT, PT MPM, PT IBP
2	Initial collateral	<i>BMP 888</i> and <i>Bunga Pertiwi 2776</i> were submitted as collateral, supported by Grosse Deeds No. 6392 and No. 8749	Demonstrated the prior security status of the vessels	PT MPM and PT IBP
3	Subsequent funding	DS transferred IDR 4,000,000,000 from 25 October 2023 for vessel repairs and operations	Established DS's financial exposure and reliance on RRT's representations	DS, RRT, PT MPM
4	Notarial instruments	Three deeds were executed on 31 January 2024, including Power of Attorney to Establish a Mortgage Deed No. 56	Created formal documentary evidence for the subsequent transaction	DS, RRT, Notary RSM
5	Representation concerning collateral	RRT declared that the vessel had not been pledged to another party	The statement conflicted with the prior collateral arrangement	RRT, PT MPM
6	Non-delivery of original document	RRT did not immediately provide Grosse Deed No. 6392 to DS	Limited DS's ability to verify the collateral status	RRT, DS
7	Prior custody of documents	Original PT MPM documents were reportedly held by BNI, as supported by the 17 January 2025 statement	Strengthened evidence of the pre-existing financing relationship	PT IBP, BNI, PT MPM
8	Double collateral	The same vessel was associated with an earlier security arrangement and a subsequent intended security arrangement	Created potential conflict of priority and legal uncertainty	PT IBP, DS
9	Notary's position	The notary recorded the statements presented by the parties in the relevant deeds	Raises the issue of the boundary between formal notarial responsibility and substantive verification	Notary RSM
10	Legal protection issue	DS relied on the representation and subsequent notarial documentation	Demonstrated potential vulnerability of subsequent good-faith parties	DS and other affected parties

The findings demonstrate that the central legal problem originated from the temporal overlap between a pre-existing security arrangement and a subsequent transaction in which the same vessel was represented as free from prior encumbrances. The evidence establishes that PT MPM had previously used the vessels as collateral for financing from PT IBP, while DS subsequently transferred IDR 4,000,000,000 and relied on RRT's representations when entering into the notarial arrangements. The inclusion of the statement concerning the absence of prior security in Power of Attorney to Establish a Mortgage Deed No. 56 therefore created a significant discrepancy between the documentary representation and the established collateral history. This discrepancy potentially produces double collateral and uncertainty

regarding the legal position of the subsequent creditor, particularly where the prior creditor had already obtained and retained the relevant ownership documents. The results further indicate that the assessment of notary liability must distinguish between the substantive responsibility of the party providing false information and the notary's professional obligation to exercise appropriate care, prudence, and procedural compliance in preparing an authentic deed.

Discussion

1. What is the Liability of a Notary for Drafting a Deed Based on False Statements Regarding the Status of the Collateral Object?

In principle, a notary, as a public official, is authorized to draw up authentic deeds and exercise other authorities as stipulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Office of Notary (UUJN). In carrying out such authority, a notary is obligated to act honestly, carefully, independently, impartially, and in a manner that safeguards the interests of all parties involved. The office of a notary is also regarded as a position of trust, entrusted by society to prepare authentic deeds concerning legal actions to be undertaken by the parties. To provide legal certainty for the parties and third parties, notarial deeds must be prepared in accordance with the applicable laws and regulations.

Under the principles of Indonesian civil law, a notary, as a public official, is vested with the authority to execute authentic deeds and perform other powers as stipulated under Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on the Office of Notary (UUJN). In exercising such authority, a notary is required to act honestly, carefully, independently, impartially, and to safeguard the interests of the parties involved in a legal transaction. Accordingly, the office of a notary constitutes an *officium nobile* (a noble profession), entrusted by society with the responsibility of preparing authentic deeds to provide legal certainty for both the parties and third parties (Handayani & Aminah, 2023; Hertanto & Tjempaka, 2026).

The liability of a notary in drafting a deed based on false statements is, in principle, limited to formal truth in accordance with the principle of *partij verklaring*, whereby the notary merely records and incorporates the statements made by the appearing parties without being obliged to verify the material truth of such statements. Consequently, the contents and substance of the deed fundamentally remain the responsibility of the parties making the declarations. Nevertheless, in cases involving false statements concerning the status of the collateral over the vessel *BMP 888* and the barge *Bunga Pertiwi 2776*, which had previously been pledged to PT IBP, the notary may still be held liable if it is proven that he or she failed to observe the principle of prudence, for instance, by neglecting to examine the original *grosse deed* or failing to verify supporting documents concerning the legal status of the vessel at the Harbourmaster and Port Authority Office (*Kantor Kesyahbandaran dan Otoritas Pelabuhan KSOP*) (Arsy et al., 2021; Hardianti, 2022; Shalsabilla, 2025).

Notarial liability may be classified into three categories, namely civil, administrative, and criminal liability. Civil liability is based on the doctrine of unlawful acts (*onrechtmatige daad*) as provided under Article 1365 of the Indonesian Civil Code, where it is established that the notary's negligence has caused losses to another party. Administrative liability may take the form of sanctions under the Notarial Code of Ethics and Article 85 of the UUJN, ranging from written warnings to dismissal from office. Criminal liability, on the other hand, may be imposed if a notary is proven to have intentionally participated in intellectual forgery (*intellectual forgery*) or material forgery (*material forgery*), as regulated under Article 391 and Article 400 letter (a) of the new Indonesian Criminal Code (Ginting, 2025; Rahmawati, 2025).

Nevertheless, notaries continue to enjoy legal protection under the principle of legality and Article 31 of the new Indonesian Criminal Code, provided that they act within

the scope of their statutory authority under the UUJN and in the absence of any element of intent. Therefore, determining a notary's involvement in the criminal offence of deed falsification requires further examination through careful and comprehensive juridical analysis. Such an approach is essential to preserving the integrity of the notarial profession while simultaneously protecting public interests and ensuring legal certainty.

The liability of a notary in drafting a deed based on false statements is, in principle, limited to formal truth, meaning that the notary merely records what is declared by the appearer. In the present case, RRT stated that the vessel *BMP 888* and the barge *Bunga Pertiwi 2776* had not been pledged to any other party. Materially, however, this statement was false because the vessels had previously been used as collateral for PT IBP. Fundamentally, a notary is not obliged to verify the material truth of the information provided by the appearing parties. A notary is responsible only for formal truth, namely the identity of the parties, their legal capacity, and compliance with the procedures for drafting the deed. Consequently, the contents of the deed derived from the statements of the parties remain the responsibility of the parties themselves (*partij verklaring* principle), in this case RRT as the party providing false information.

In this regard, RRT may be held criminally liable under Article 400 letter (a) of Law Number 1 of 2023 concerning the Criminal Code (KUHP), which stipulates that any person who intentionally creates false information or falsifies a certificate issued by an authorized official regarding ownership rights or other rights over an object, with the intention of facilitating its transfer or encumbrance or misleading law enforcement officials regarding the origin of such object, shall be subject to imprisonment for a maximum of four years and a criminal fine.

Nevertheless, a notary is not entirely exempt from liability if, during the process of drafting the deed, the notary fails to exercise the principle of prudence, such as by neglecting to verify supporting documents or failing to request and examine the original *grosse deed*, which had not yet been delivered by RRT to Notary RSM, S.H., M.Kn. before the signing of the deed. A ship mortgage concerning a collateral object must satisfy several legal requirements (Mayana & Santika, 2021).

Before preparing a Deed of Power of Attorney to Establish a Ship Mortgage, a notary should first verify the authenticity of the vessel registration *grosse deed* with the port authority where the vessel is registered. In this case, the vessel was registered with the Harbourmaster and Port Authority Office (*Kantor Kesyahbandaran dan Otoritas Pelabuhan KSOP*) or another technical implementation unit under the Directorate General of Sea Transportation. The notary should ascertain that the vessel is not already encumbered by a mortgage or other security rights and, if such encumbrances exist, determine their ranking and priority.

Accordingly, the notary may incur liability that can be classified into three categories, namely civil, administrative, and criminal liability. A notary may be held civilly liable if it is proven that the notary committed negligence or an error in performing his or her duties, thereby causing losses to another party. In this case, Notary RSM, S.H., M.Kn. should have exercised the duties of office carefully and diligently by ensuring at least a minimum degree of conformity between the parties' statements and the formal evidence contained in the original *grosse deed*. The civil liability of a notary concerning the material truth of a deed may be examined through the doctrine of unlawful acts (*onrechtmatige daad*).

An unlawful act may be either active or passive in nature. An active unlawful act consists of conduct that directly causes damage to another party, whereas a passive unlawful act occurs when a person fails to perform an act that he or she is legally obliged to perform. Therefore, an unlawful act necessarily involves conduct that results in damage or loss. If a notary is proven to have committed an unlawful act, the notary may be ordered to pay compensation, costs, and interest. Article 1365 of the Indonesian Civil Code provides that

any person who commits an unlawful act causing damage to another person is obliged to compensate the resulting loss. In this context, the concept of an unlawful act is interpreted broadly because it encompasses conduct that violates not only statutory provisions but also propriety, morality, and the rights of others, thereby causing harm (Wahyudi, 2025).

In performing official duties, a notary is constantly engaged with individuals, society, and the State. The relationship between a notary and the public is regulated by both the Notarial Code of Ethics and the UUJN. A notary must adhere to ethical standards to preserve the dignity and integrity of the profession. The Code of Ethics ensures that notaries act in accordance with the provisions of the UUJN and professional ethical standards. The Code of Ethics applies to all members of the Indonesian Notary Association (*Ikatan Notaris Indonesia* INI).

Regarding administrative liability, Article 6 of the Notarial Code of Ethics stipulates sanctions that may be imposed upon members who violate ethical rules. Such sanctions may include reprimands, warnings, temporary suspension, honorable dismissal, or dishonorable dismissal. The type of administrative sanction imposed depends on the nature and severity of the violation committed. Similar provisions are also stipulated in Article 85 paragraph (2) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Office of Notary.

If a notary violates the obligations of office, such as failing to act carefully and diligently, administrative sanctions may be imposed. Pursuant to Article 74 paragraph (1) of the UUJN, the procedure for imposing administrative sanctions by the Supervisory Council of Notaries may take the form of oral or written warnings. In contrast, the imposition of civil sanctions against a notary must be based upon a binding court decision requiring the notary to compensate the injured party.

If a notary violates statutory provisions while preparing an authentic deed, the notary may be required to compensate the injured party. A notary may also be subject to civil sanctions if the aggrieved party files a lawsuit before the court. Under positive law, criminal law concerns circumstances in which a person is punished for committing an act prohibited by law and accompanied by criminal sanctions. Accordingly, based on the principle of legality, a person cannot be punished unless the act committed is contrary to the law.

The criminal law provisions contained in the Criminal Code must be observed by notaries in carrying out their duties. Article 31 of Law Number 1 of 2023 concerning the Criminal Code provides that a person who performs an act in the implementation of statutory provisions shall not be subject to criminal punishment. This provision serves as a legal basis for protecting notaries in exercising their authority, provided that their actions are carried out in accordance with the law. Therefore, a notary cannot be held criminally liable when drafting a deed within the scope of his or her authority and in compliance with the Code of Ethics and the UUJN.

The authority of a notary to prepare notarial deeds in the form of minutes, copies, excerpts, or *grosse deeds* may also be used to determine categories of deed falsification, namely: (1) Intellectual forgery, which occurs when there is false information in the contents of the deed, including: (a) the appearers provide false information in the deed; (b) the notary provides false information in the heading, comparison section, or closing section of the deed; and (c) the notary alters, adds, or removes statements made by the appearers; (2) Material forgery, which relates to the falsification of signatures of the appearers, the notary, or witnesses; and (3) Forgery of copies, *grosse deeds*, or excerpts, involving falsification of derivative documents originating from the authentic deed (Hardianti, 2022).

As stipulated in Article 391 of Law Number 1 of 2023 concerning the Criminal Code regarding document forgery and the use of forged documents, paragraph (1) provides that any person who intentionally creates a false document or falsifies an existing document that has legal significance such as creating rights, obligations, debt discharge, or serving as evidence

shall be liable if such act is accompanied by the intention to use the document or instruct another person to use it as though it were genuine and if it has the potential to cause harm.

Furthermore, Article 391 paragraph (2) contains the following elements: (1) objective elements, namely the act of using a forged or falsified document and the potential for such use to cause harm; and (2) the subjective element, namely intentional conduct. Accordingly, the essence of this provision lies in the existence of intent, the purpose of use, and the potential for harm, whereby both the creator and the user of a forged document may be held equally criminally liable and subjected to equivalent criminal sanctions (Ginting, 2025). Based on the foregoing, further evidentiary proceedings are required to establish whether the notary committed the act of creating a false deed. In this regard, the notary may be held accountable both institutionally and personally. Therefore, when a notary prepares an authentic deed without complying with statutory provisions, such conduct may constitute a criminal offence. Conversely, the extent of the notary's involvement in the unlawful act must be carefully considered. If a notary is proven to have committed acts prohibited by law, the notary may be held liable and subjected to sanctions.

In conclusion, a notary may incur criminal liability if he or she intentionally incorporates false information into a deed or participates in falsifying the status of a ship mortgage. However, if the notary merely records the statements of the parties without knowledge of their falsity, the notary generally cannot be held criminally liable, provided that there is no element of intent or participation. Investigations concerning alleged violations committed by a notary must also be conducted through sound legal reasoning and analysis, as the notary's actions must be assessed in accordance with the prohibitions stipulated in both the UUJN and the Criminal Code.

2. What Are the Legal Consequences of Double Collateralization in a Power of Attorney to Establish a Mortgage?

The provisions governing mortgages over immovable property remain applicable under the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* KUHPerdata), whereas the inapplicability of mortgage provisions only concerns encumbrances imposed on land. Article 1162 of the Civil Code defines a mortgage as “a proprietary right over immovable property to obtain repayment thereof for the settlement of an obligation.” Furthermore, Article 314 of the Indonesian Commercial Code (*Kitab Undang-Undang Hukum Dagang* KUHD) provides that “Indonesian vessels with a gross tonnage of at least 20 m³ may be registered in the ship registry in accordance with regulations to be stipulated by a separate ordinance.” Consequently, such vessels are classified as immovable property due to their substantial size and, once registered, may serve as objects of mortgage security.

The registered vessel document is evidenced by a *grosse deed*, which constitutes the first copy of the original deed (*minuta*) executed before an authorized public official, namely the Ship Registration Officer (*Pejabat Akta Kapal Laut*) (Asikin, 2020). Article 60 of Law Number 17 of 2008 concerning Shipping stipulates that:

- a. A vessel registered in the Indonesian Ship Registry may serve as collateral for debt through the establishment of a ship mortgage;
- b. The creation of a ship mortgage shall be effected by a mortgage deed executed by the Ship Registration and Transfer Recording Officer at the place where the vessel is registered and recorded in the Principal Register of Ship Registration;
- c. Every mortgage deed possesses the same executorial force as a final and binding court judgment; and
- d. In the event that the *Grosse Deed of Mortgage* is lost, a replacement *Grosse Deed* may be issued pursuant to a court order (Tiendas, 2024).

According to the Indonesian Civil Procedure Code (*Herzien Inlandsch Reglement* HIR), every deed possessing executorial title may be directly enforced through execution

proceedings. Article 224 HIR provides that a *grosse deed of mortgage* contains an executorial clause in its heading stating, “For Justice Based on the Belief in the One and Almighty God.” By virtue of this executorial clause, if the debtor defaults on his obligations, the creditor may directly petition the Chairperson of the District Court for execution without first filing a civil lawsuit (Fuady, 2021). Furthermore, Article 29 of the Minister of Transportation Regulation Number 39 of 2017 concerning Ship Registration and Nationality requires that the establishment of a mortgage be accompanied by the original *grosse deed* of the vessel.

Under the Civil Code, a mortgage possesses two fundamental characteristics, namely the principle of publicity (*beginsel der openbaarheid*) and the principle of specialty (*beginsel der specialiteit*). The principle of publicity implies that every person has the right to ascertain the existence of a mortgage over a particular immovable property by verifying the information through the Harbourmaster's Office where the vessel is registered or through the Directorate General of Sea Transportation. Such encumbrances are also recorded in the certificate evidencing rights over the relevant property. Conversely, the principle of specialty signifies that a mortgage right is attached to a specifically identified immovable property.

Applications for a ship mortgage deed are made before the Ship Registration and Transfer Recording Officer at the place where the vessel is registered. Such applications may be submitted by the parties concerned, including the vessel owner, the mortgagee, or the mortgagee acting pursuant to a power of attorney granted by the owner. The application must be accompanied by the credit agreement and the original *grosse deed* of ship registration or vessel transfer. The owner's authorization must be executed before a notary in the form of a Power of Attorney to Establish a Mortgage (*Surat Kuasa Memasang Hipotek SKMH*).

A mortgage right is an accessory right (*accessoir*), namely an additional proprietary security (*zakelijke zekerheid*) that is attached to another agreement, generally an acknowledgment of debt, which constitutes the principal obligation (*hoofdverbintenis*). Consequently, a mortgage right is merely ancillary to the principal obligation. The credit agreement functions as the principal agreement, whereas the security arrangement constitutes the accessory agreement. Without the existence of a principal credit agreement, the establishment of security rights cannot legally occur.

As a proprietary security right, a ship mortgage recognizes the concept of mortgage ranking or priority. Indonesian law permits the existence of multiple security interests over the same collateral, provided that the priorities are clearly determined and known to the parties concerned. Therefore, a registered vessel may be used as collateral through a mortgage and may be encumbered by more than one mortgage. Article 1181 of the Civil Code stipulates that an earlier registered ship mortgage has a higher priority than subsequently registered mortgages. Likewise, Article 315 of the Commercial Code provides that mortgage ranking is determined according to the date of registration, and mortgages registered on the same date possess equal ranking (Arben & Utama, 2024; HS, 2023). Moreover, the holder of a ship mortgage enjoys a preferential right (*droit de préférence*). As a preferred creditor, when the debtor defaults and the loan becomes non-performing, the creditor possesses the primary right to receive repayment from the proceeds of the sale of the collateral object (Anis, 2018; Astuti et al., 2020).

The prevailing legal framework does not explicitly impose upon a notary the obligation to verify whether a vessel has already been pledged or encumbered by a mortgage, as such verification pertains to material truth. In performing official duties, a notary is generally responsible only for procedural and formal aspects of preparing an authentic deed rather than the substantive truth of its contents. Accordingly, a notary must remain neutral and impartial while providing legal advice to parties seeking guidance. Nevertheless, a notary may still bear responsibility for the material truth of a deed if a dispute or legal issue subsequently arises in relation to that deed. If a notary commits negligence in the

performance of his or her duties, the notary may be subjected to sanctions in accordance with the applicable laws and regulations.

The legal consequences of double collateralization in a Power of Attorney to Establish a Mortgage do not automatically invalidate the agreement but rather give rise to issues concerning the position and validity of the subsequent encumbrance. In the present case, the vessel *BMP 888* and the barge *Bunga Pertiwi 2776* had previously been pledged to PT IBP. Consequently, when RRT subsequently pledged the same objects to DS through a Power of Attorney to Establish a Mortgage, the legal principle of priority (*droit de préférence*) applied, whereby PT IBP, as the first creditor, retained priority rights over the collateral object.

As a result, the mortgage intended for DS potentially becomes ineffective or even unenforceable if the collateral had already been encumbered and such encumbrance was not disclosed to the subsequent creditor. RRT's false statements concerning the status of the collateral object created a legal defect in the agreement, thereby providing DS with grounds to seek annulment of the deed. Normatively, double collateralization is not prohibited, provided that it is conducted transparently and duly recorded in accordance with the law. In the present case, however, the existence of bad faith and the concealment of material facts undermine the deed's conclusive evidentiary value and create the potential for legal disputes. Therefore, the legal consequences of double collateralization in this case not only place the second creditor in a subordinate position but also affect the validity and enforceability of the deed executed on the basis of false statements.

Although a notary is not required to conduct an extensive examination of material truth, the notary remains bound by the principle of prudence. Article 16 paragraph (1) letter (a) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Office of Notary requires notaries to act in a trustworthy, honest, careful, independent, and impartial manner while safeguarding the interests of the parties involved in legal transactions. The requirement of diligence implies that notaries must exercise reasonable prudence, including ensuring that the legal status of the object of the agreement is sufficiently clear.

If a notarial deed contains formal defects affecting its procedural authenticity, the deed may be downgraded to a private deed (*akta di bawah tangan*), thereby losing its status as a perfect and binding authentic deed. This has implications for its evidentiary value in court proceedings, as it must then be corroborated by other evidence if contested by the opposing party. In contrast, material defects concern the substance of the deed, such as false statements, thereby creating the possibility for a court to declare the deed null and void.

Material defects likewise affect the deed's substantive evidentiary force and may ultimately lead to judicial annulment and uncertainty in civil disputes. The legal consequences of such annulment may include restoration to the original position, restitution, or the emergence of an obligation to pay damages. These weaknesses demonstrate that the legal certainty of notarial deeds depends not only on statutory regulation but also on the consistent application of the law by the courts and its acceptance by society. If the legal consequences of a defective deed whether merely the loss of evidentiary value or complete annulment are consistently applied according to the type and significance of the defect, notarial deeds may continue to function as effective instruments for preventing disputes. Conversely, the objective of legal certainty will fail if assessments concerning formal and material defects remain inconsistent, thereby making it difficult for society to understand the legal force of such deeds (Afriansyah, 2026; W. A. S. Prastica, 2020).

The ownership status and mortgage encumbrances of vessels are recorded in the Principal Register of Ships, thereby reflecting the principle of publicity, under which every person may ascertain the legal status of a vessel through the registry. In the process of establishing a ship mortgage, a notary should verify the vessel registry through the Harbourmaster's Office with respect to the collateral object. Such verification is essential

from the standpoint of legality and ownership documentation to ensure transactional security for creditors.

The notary's role is limited to preparing the Power of Attorney to Establish a Mortgage (SKMH), which serves as a complementary document and attachment to the ship mortgage executed by the Ship Registration and Transfer Recording Officer. Prior to preparing the SKMH, the notary should verify the authenticity of the *Grosse Deed* of ship registration at the ship registration and transfer recording office. In the present case, there was negligence on the part of the notary because the original *grosse deed* had not yet been received, yet the mortgage transaction was nevertheless executed. Therefore, the notary should also ensure that the vessel being pledged is not the subject of a dispute or already pledged to another party. Such measures minimize the possibility of disputes among creditors in the future. It is equally important for the notary to examine the measurement certificate containing the vessel's technical data and official identity as issued by the Harbourmaster. These verification measures aim to provide legal protection and certainty to creditors regarding the collateral object.

An authentic deed executed by a notary must be presumed valid and binding upon the parties until its invalidity is proven. Although authentic deeds possess the strongest and most conclusive evidentiary force, notaries remain responsible for the deeds they prepare and for the parties concerned. If any party suffers losses as a result of the issuance of an authentic deed, such party may petition the court for its annulment and request a declaration that the deed is defective if a conflict of interest or violation of notarial principles can be established. Article 1869 of the Civil Code provides:

"A deed which, due to the lack of authority or incapacity of the public official concerned, or due to a defect in form, cannot be treated as an authentic deed, shall nevertheless possess the evidentiary force of a private document, provided that it has been signed by the parties."

Accordingly, a deed may be reduced to the status of a private document if the notary has violated legal provisions. Where such violations cause losses to the parties, claims for compensation may be brought against the notary, and the deed may be declared invalid by the court.

Therefore, a notary must exercise the utmost caution in drafting deeds and comply with all legal rules and procedures in order to minimize the possibility of future disputes. Failure to exercise due care and comply with legal requirements may render the deed defective, thereby diminishing its evidentiary force or even rendering it invalid.

Under the Law on the Office of Notary, several legal consequences arise from the annulment of a notarial deed, including:

- a. Voidable sanctions, namely sanctions imposed on legal acts containing juridical defects that permit annulment at the request of a particular party. Following annulment, the legal act no longer produces legal effects, and its validation or cancellation depends upon the party entitled to seek annulment or ratification.
- b. Nullity by operation of law, namely civil sanctions imposed upon legal acts containing juridical defects that render them void *ab initio*. In such circumstances, the legal act is deemed never to have existed from the moment the deed was executed.

Under Indonesian positive law, where a notarial deed contains elements of document forgery and false statements, such conduct violates Articles 391, 392, and 394 of the Criminal Code. Accordingly, pursuant to Article 1320 of the Civil Code, an authentic deed containing false statements gives rise to legal disputes and may be challenged before the court by the injured party through a civil action seeking its annulment. Upon the issuance of a final and binding court judgment, the deed may be declared null and void, meaning that it no longer possesses legal force due to its legal defects. Furthermore, a notarial deed that initially constituted an authentic deed may be downgraded to a private document pursuant to Article

41 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Office of Notary (UUJN).

CONCLUSION AND RECOMMENDATIONS

Conclusion

Based on the findings of this study, the liability of a notary in relation to a deed containing false statements must be distinguished from the substantive responsibility of the parties providing such statements. RRT, as the party who declared that the vessel had not previously been pledged, bears primary responsibility for the substantive truthfulness of the information presented before the notary. However, the notary may incur civil or administrative liability when it is established that the notary failed to exercise the required principle of prudence, particularly by neglecting to examine relevant supporting documents or identify inconsistencies between the parties' statements and available formal evidence. Conversely, when the notary has fulfilled the duties and procedures prescribed by the Law on the Office of Notary (UUJN) and the Notarial Code of Ethics, and has acted without negligence or intentional misconduct, the notary should not be held criminally responsible merely because the parties subsequently provide false information.

The study further demonstrates that multiple mortgages over a vessel may be legally recognized when established transparently and recorded in accordance with the applicable legal framework, but the existence of a prior security interest determines the priority position of competing creditors. In the present case, the prior security arrangement involving PT IBP gives rise to the principle of priority (*droit de préférence*), placing the first creditor in a preferential position and creating legal risks for DS as the subsequent creditor. The false representation concerning the vessel's collateral status may constitute a material defect affecting the legal validity and evidentiary strength of the relevant deed, potentially resulting in judicial annulment, reduction of its evidentiary status, or its treatment as a private deed (*akta di bawah tangan*). Therefore, the dispute demonstrates that legal certainty and protection of the parties require not only truthful representations from the parties but also the exercise of professional prudence by the notary in verifying the legal status of the object underlying the deed.

Limitations

This study has several limitations that should be considered when interpreting its findings. First, the analysis focuses on a specific legal dispute concerning the use of a vessel as collateral and therefore may not fully represent other forms of movable-property security or different factual configurations involving notarial deeds. Second, the study primarily adopts a normative juridical approach based on statutory provisions, legal documents, and relevant legal materials, which limits the extent to which broader empirical perspectives concerning notarial practice and creditor experiences can be incorporated. Third, the analysis of notary liability remains dependent on the availability and evidentiary strength of the documents associated with the prior and subsequent security arrangements.

Recommendations

Notaries should strengthen the implementation of the principle of prudence by conducting adequate verification of ownership documents, existing security interests, and other relevant legal records before incorporating statements concerning the status of collateral into an authentic deed. Parties entering into financing or security transactions should likewise provide accurate information and conduct independent due diligence concerning the legal status of the collateral to prevent conflicting security interests and potential disputes. Regulatory institutions should consider strengthening mechanisms for the verification and registration of vessel mortgages so that information concerning existing security interests can

be accessed and verified efficiently by relevant parties. Future research should further examine notary liability through comparative cases and empirical studies to develop a more comprehensive understanding of the relationship between notarial duties, creditor priority, and legal protection for good-faith parties.

Author Contributions

The first author was responsible for formulating the research problem, developing the legal analysis, collecting and examining relevant legal materials, and preparing the initial manuscript. The second author contributed to the development of the conceptual and theoretical framework, interpretation of the legal findings, and critical revision of the manuscript. Both authors participated in reviewing the arguments concerning notary liability, the validity and evidentiary status of the deed, and the legal consequences of multiple security interests. All authors reviewed and approved the final version of the manuscript and agreed to be accountable for the integrity and accuracy of the work.

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